IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO 6035 OF 2005
IN
CRIMINAL APPEAL NO. 862 OF 2005

Bhaskar Nagnath Kumbhar and
Others ... Applicants.
Vs.
The State of Maharashtra
And others .. Respondents.

Mr. S.V. Kotwal with Mr. M.S. Mohite for the applicants.
Mr. A.M. Shringarpure, A.P.P. for the State.

CORAM : SMT. RANJANA P. DESAI &
ANOOP V.MOHTA JJ.

DATE : 19TH OCTOBER, 2005.

P.C.

. Applicants-original accused 1, 2 and 4 respectively in Sessions Case No.55/2004 were tried along with one other for offences punishable under Section 307, 302, 326 r/w section 34 of Indian Penal Code, in Sessions Court at Solapur. Accused No.3 was acquitted, The applicants were convicted under section 302 r/w section 34 of I.P.C. and sentenced to life imprisonment. Their appeal is admitted. We are considering the bail application.

2. We have heard Mr. Kotwal, the learned Counsel for the applicants He pointed out that the trial Court has acquitted accused 3 by holding that accused 3 has proved the defence of alibi. All the three eye witnesses had also implicated this accused. Therefore, it is evident that the three eye witnesses had falsely implicated accused 3. The learned Counsel for the applicants urged that therefore, it is possible that eye witnesses have falsely implicated the present applicants also. The learned Counsel further contended that the injuries are not caused on any vital part of the body. The case of the prosecution is that the iron rods were used but the discovery is disbelieved. He further pointed out that out of the three eye witnesses, the statement of one eye witness is recorded after two months. He further pointed out that the incident is dated 30th May, 2003. The deceased died on 2nd July, 2003. No post-mortem was done of the deceased. He further submitted that the applicants were on bail in the trial Court and hence, this Court should release them on bail.

3. We have also heard the learned A.P.P., Mr.

Shringarpure for the State. He pointed out that there are three eye witnesses. One eye witness is wife of the deceased and there is no reason for the wife to leave out the real assailant. He submitted that the prayer for bail be rejected.

4. We are surprised to find that there is no post mortem report on record. The learned Judge has proceeded only on the basis of injury certificate. It is significant to note that all witnesses had implicated accused 3 but the defence of alibi of accused 3 is held to be proved and he has been acquitted. Therefore, prima facie there is some substance in the submission of the learned Counsel appearing for the applicants that the witnesses could have exaggerated the case as regards the present applicants are concerned. Besides the injuries are not on the vital part of the body . The discovery of iron rods is disbelieved. In the circumstances we deem it fit to enlarge the applicants on bail. Hence following order.

. Applicants Bhaskar Nagnath Kumbhar, Mahesh Trimbak Kumbhar and Prabhakar Nagnath Kumbhar, the

original accused Nos. 1, 2 and 4 respectively are ordered to be released on bail in the sum of Rs. 20,000/- with one or two sureties each to make up the amount. While on bail applicants 1 and 2 shall report to Mohol Police Station, Solapur once in a month. We are informed that applicant 3 is in Army. He shall report to Mohol Police Station as and when he is in the village. Application is disposed of in the aforesaid terms.

(SMT. RANJANA P.DESAI, J)

[ANOOP V. MOHTA, J.]